उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 626/ सन् 2002

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT:
(In Jail)

Ram lal, S/o Dhanoo Ram,
aged about 26 years,
Cultivator and resident of Village Dabripara, P.S. Surajpur,
Distt. Sarguja (C.G.)

- Versus -

RESPONDENT:

State of Chhattisgarh,
Through Police Surajpur.

{Criminal appeal under Section 374 (2) of Criminal Procedure Code}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

19-12-2007

Mrs. Hamida Siddique, counsel for the appellant.

Mr. D.K. Gwalre, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on Dais.

L.C. Bhadoo, J: -

1. The accused/appellant namely, Ramlal being aggrieved by the impugned judgment of conviction and order of sentence imposed upon him for commission of offence punishable under Sections 302 & 323 of the I.P.C., has preferred this appeal questioning legality & correctness of the judgment dated 13-4-2002 passed by the 2nd Additional Sessions Judge, Fast Track Court, Surajpur in Sessions Trial No.232/2001, whereby learned Additional Sessions Judge after holding the accused/

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appellant for commission of offence under Sections 302 & 323 of the I.P.C. sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default of payment of fine to further undergo R.I. for three months & to undergo R.I. for one year and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month, respectively.

2. Case of the prosecution, in brief, is that there was some dispute regarding land between the victim party and the accused party because both the parties are heirs of two real brothers namely, Dhannoo & Vanshroop. On 10-3-2001 one of the accused Sohan called Holsai (since deceased) to his house, when Holsai went to the house of Sohan, Sohan asked Holsai as to who has called him and started quarreling with Holsai. In the mean time, accused Dhannoo came carrying axe and rushed towards Holsai to attack him. Hearing the commotion, Kamal Prasad & Man Prasad, brothers of Holsai, reached on the spot and snatched axe from Dhannoo. When Ramlal, son of Dhannoo, rushed towards Holsai carrying Lathi to attack him, that Lathi was also snatched. Thereafter, the accused persons threatened Holsai with dire consequences. Therefore, Holsai & Man Prasad went to the house of village Up-Sarpanch Rajdhani to inform him about the incident on which Rajdhani told them that he will convene Panchayat next day, that day being the festival of Holi. Thereafter, when Holsai & Man Prasad were returning to their house, they were on the way to their house and reached near the field of Ranjit Sahu, accused/appellant Ramlal along with Mohit @ Mohelal, Nanku, Jagat Narayan, Kanti, Mangal & Sohan

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	came armed with Lathis, they blocked the way and started attacking Holsai & Man Prasad with Lathis. Hearing the commotion, complainant Kamal Prasad, brother of the deceased, came on the scene. He was also attacked by the accused persons with Lathi. Holsai sustained injuries on head. Man Prasad also sustained injuries on head, mouth, cheek hands & legs. Kamal Prasad sustained injuries on head, hands, legs & cheeks. The incident was witnessed by Subhash Guruji, Narayan Ram Prasad and they intervened. The matter was reported by Kamal Prasad under Ex.P-1.	
	3. The Investigating Officer took up the investigation. He sent Holsai, Man Prasad & Kamal Prasad to hospital for treatment, however, Holsai succumbed to the injuries sustained by him, in the hospital. Merg intimation Ex.P-19 was given. After examination of their injuries, Dr. S.L. Jaiswal (PW-5) prepared injury reports Ex.P-6 in respect of Kamal Prasad, Ex.P-7 in respect of Holsai (since deceased) & Ex.P-8 in respect of Man Prasad. When Holsai died in the hospital, post-mortem on his body was conducted by Dr. Sanjay Tripathi (PW-6), on the same day. He opined that cause of death was shock due to head injury and nature of death was homicidal. He prepared post-mortem report Ex.P-16. After giving notice Ex.P-17 to the Panchas, inquest Ex.P-18 was conducted on the body of Holsai by the Investigating Officer.	
	4. After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Surajpur, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned 2nd	

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Additional Sessions Judge, Fast Track Court, Surajpur, received the case on transfer for trial.

5. The prosecution in order to establish charges against the accused persons examined 14 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them and stated that on account of land dispute they have been falsely implicated in the crime and the matter has been reported in an exaggerated manner.

6. Learned Additional Sessions Judge after hearing counsel for respective parties, convicted and sentenced the accused/appellant as aforesaid. He also convicted accused Jagat Narayan & Mohit under Section 323 of the I.P.C. However, he acquitted other accused persons of the charges levelled against them.

7. We have heard Mrs. Hamida Siddique, learned counsel for the appellant and Mr. D.K. Gwalre, learned Additional Public Prosecutor on behalf of the State/respondent.

8. Mrs. Hamida Siddique has not disputed the homicidal death of Holsai. Moreover, Man Prasad (PW-2) has stated in his evidence that accused Ramlal attacked deceased Holsai with Lathi. Presence of the accused on the scene of occurrence has been established by the evidence of Kamal Prasad (PW-1), Subhash Yadav (PW-4) & Narayan Ram (PW-10). Dr. Sanjay Tripathi (PW-6) has stated in his evidence that he conducted post-mortem on the body of Holsai, apart from other injuries there was

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fracture of both parietal bones & occipital bones, brain membrane was ruptured and there was haemotoma beneath the membrane of brain. Cause of death was shock as a result of head injury and death was homicidal in nature. His report is Ex.P-16. Therefore, in view of the above ocular & medical evidence, it is established that the death of Holsai was homicidal in nature.

9. As far as complicity of the accused in the crime in question is concerned, conviction of the accused rests on the testimony of Man Prasad (PW-2), Subhash Yadav (PW-4) & Narayan Ram (PW-10). Man Prasad (PW-2), who is an injured witness & brother of the deceased, has stated in his evidence at the time of incident he along with his brother Holsai (since deceased) were returning from the house of Village Up-Sarpanch Rajdhani, when they reached near the agricultural farm of Ranjit Sahu, the accused persons attacked them. On cross-examination by counsel for the accused, in para 7, he has categorically stated that accused/appellant Ramlal attacked his brother with Lathi, 2-3 times. Dr. S.L. Jaiswal (PW-5) has stated in his evidence that injuries found on the body of the injured persons i.e. Holsai, Kamal Prasad & Man Prasad could be caused by the Lathis in question which were sent for examination and his report is Ex.P-11.

10. Subhash Yadav (PW-4) has stated in his evidence that Ramlal & Mohey ran after Man Prasad & Holsai and gave beating. Man Prasad also sustained injuries. Even though this witness had not stated that Mohey attacked Holsai, whereas Man Prasad (PW-2), injured witness,

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has stated that Ramlal attacked Holsai and Subhash Yadav (PW-4) has stated that Mohey was empty handed and Ramlal was carrying Lathi, therefore, testimony of Man Prasad (PW-2) is corroborated by the testimony of Subhash Yadav (PW-4) that since Ramlal was holding Lathi and Mohey was empty handed, as a natural consequence injuries of Holsai were inflicted by Ramlal. Presence of Ramlal on the scene of occurrence is established by the evidence of Narayan Ram (PW-10) who has stated that Holsai was lying on the ground in serious condition, Ramlal & Mohey were standing on the bank of the field, Man Prasad was lying and his body was drenched in blood, Holsai was not able to speak, whereas Man Prasad was speaking.

11. In the circumstances, finding of the trial Court that accused Ramlal attacked deceased Holsai with Lathi is based on the testimony of injured eyewitness Man Prasad (PW-2) and independent eyewitnesses Subhash Yadav (PW-4) & Narayan Ram (PW-10). This finding does not suffer from any illegality or infirmity. Therefore, complicity of accused Ramlal in attacking Holsai is established by legal evidence available on record and to that extent, finding of the trial Court is correct.

12. Learned counsel for the appellant argued that in this case there is no specific evidence that who inflicted fatal head injury to Holsai, there is no clear and cogent evidence in that respect. In this case, originally eight accused persons were prosecuted. It is not established that who inflicted fatal injury. Moreover, the deceased & accused persons are heirs of two real brothers and there was no premeditation or

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preparation for committing the murder of Holsai. Therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C. Learned counsel placed reliance on the judgment of the Apex Court in the matter of **Sarman and others v. State of Madhya Pradesh (AIR 1993 SC 400)**.

13. On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

14. In order to appreciate the argument advanced by respective counsel, we have perused the material available on record. It is admitted position that victim party and accused party are heirs of the two real brothers. It is also admitted position that there was long animosity between both the parties on account of some land dispute. On the fateful day i.e. 10th March, 2001, accused Sohan called Holsai & Ram Narayan to his house, when Holsai went to the house of Sohan, Sohan objected as to who has called him. Dhannoo, father of accused Sohan, came with axe, when he rushed towards Holsai to attack him, the axe was snatched, in the mean time, accused Ramlal also came with Lathi, even that Lathi was also snatched by the complainant party, but they threatened that they are not going to leave them, as such, Man Prasad & Holsai went to the house of Village Up-Sarpanch Rajdhani in order to inform him about the incident on which the Up-Sarpanch told them that tomorrow he is going to convene Panchayat in order to settle the matter, as that day being the festival of Holi. When they were returning to their house and by the time they reached near the field of Ranjit Sahu, the accused

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party armed with Lathis attacked Man Prasad & Holsai, in that process accused Ramlal attacked Holsai with Lathi on his head and his right & left parietal bones as well as occipital bone were fractured, he became unconscious on the spot and fell down. He was immediately taken to the hospital where he died in the evening. Man Prasad, injured eyewitness, who was accompanying Holsai, has categorically stated in para 7 of his evidence that accused Ramlal attacked Holsai with Lathi 2-3 times.

15. Therefore, it is clear that fatal injuries which were responsible for the death of Holsai were inflicted by the accused/appellant. In the light of above facts, it is clear that in the first instance, the accused attempted to attack deceased Holsai and also threatened the deceased party, the deceased along with his brother Man Prasad went to complain to the village Up-Sarpanch, when they were returning back, the accused party again attacked the deceased party and in that process, the accused/ appellant inflicted fatal injury on the head of the deceased which caused fracture of both the parietal & occipital bones which were responsible for the death of Holsai. Whole story makes it clear that Ramlal attacked the deceased with intention to cause his death, as the place of body chosen by Ramlal was vital organ head and he inflicted blows of Lathi with such a force that both the parietal & occipital bones were fractured. In the circumstances, intention of the accused was writ large to cause the death of Holsai.

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16. The judgment cited by learned counsel for the appellant is distinguishable on facts for the reason that in that case, the prosecution witnesses were not able to pin point as to who caused fatal injury No.15 fracture of parietal bone, therefore, the Apex Court reached to the conclusion that all the accused persons are responsible, as such, offence was converted from Section 302 read with Section 149 of the I.P.C. to Section 304 Part-II read with Section 149 of the I.P.C.

17. In the result, we do not find any substance in this appeal. The appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Soma